

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	:	Chapter 11
	:	
<b>GENERAL MOTORS CORP., <u>et al.</u>,</b>	:	Case No. 09-50026 (REG)
	:	
Debtors	:	(Jointly Administered)
	:	

**COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF REVENUE'S  
LIMITED OBJECTION TO DEBTORS' § 363 SALE MOTION**

TO THE HONORABLE ROBERT E. GERBER,  
UNITED STATES BANKRUPTCY JUDGE:

The Commonwealth of Pennsylvania, Department of Revenue ("Commonwealth"), by and through the Pennsylvania Office of Attorney General, Thomas W. Corbett, Jr., its counsel, responds to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k) and (m) and 365, etc. (the "Motion") [docket item 92], as follows:

1. The Commonwealth is a creditor of General Motors Corporation ("GM") and accordingly, filed its proof of claim for unpaid taxes in the amount of \$3,807,728.96 on or about June 16, 2009.

2. The Commonwealth is a secured creditor of GM in the amount of \$2,943,934.00 for unpaid corporation taxes.

3. The Commonwealth is a priority creditor of GM in the amount of \$862,656.96 for unpaid corporation taxes, sales taxes, and employer withholding taxes.

4. The Commonwealth is a general unsecured creditor of GM in the amount of \$1,138.00 for unpaid corporation taxes.

5. In Section 2.1 of the Master Sale and Purchase Agreement (the “Agreement”), the sale of Purchased Assets shall be “free and clear of all Encumbrances (other than Permitted Encumbrances).” Section 1.1 of the Agreement defines Permitted Encumbrances to include “liens for Taxes.” It further requires that “appropriate reserves” be established “in each case” for such encumbrances. It is unclear from the Agreement whether reserves have been established to date and/or whether sufficient monies have been placed in those reserves for its secured tax claims. It is further unclear from the Agreement whether the Commonwealth’s liens will be retained on the portion of the Purchased Assets in Pennsylvania.

6. Section 2.3(a)(v) of the Agreement includes within Assumed Liabilities “all Liabilities of Sellers . . . (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order . . . .” It is unclear from the Agreement whether the Commonwealth’s claims are Assumed Liabilities. On June 1, 2009, this Court entered an Order Pursuant to 11 U.S.C. §§ 363(b), 507(a)(8), 541, and 105(a) Authorizing Debtors to Pay Prepetition Taxes and Assessments. It is also unclear whether the Debtors intend to pay the Commonwealth its prepetition taxes or whether the Commonwealth will look to the Purchaser for payment of said taxes. In either instance, the

Agreement fails to detail the arrangements being made to ensure that funds will be available to pay the Commonwealth's claims in full.<sup>1</sup>

7. Paragraphs 8 and 28 of the proposed Order approving the Motion extinguishes the setoff rights of the Commonwealth, violating 11 U.S.C. §§ 362(b)(26), 363(e), and 553(a). Section 362(b)(26) authorizes setoffs of prepetition income tax liabilities and prepetition income tax refunds. Section 553(a) allows "a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case . . . against a claim of such creditor against the debtor that arose before the commencement of the case." There is no provision for abrogating a creditor's setoff rights in § 363. If the Debtors intend through their Motion and proposed Order to prevent a taxing authority to offset any prepetition tax liabilities against any tax refunds assigned to the Purchaser pursuant to § 2.2(a)(xiii) of the Agreement, the relief requested should be denied to that extent.

8. Paragraph 39 of the proposed Order states that "[n]o law of any state or other jurisdiction, including bulk sales law or similar law, shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order." This paragraph blatantly contradicts 28 U.S.C. §§ 959(b) and 960, which require debtors in possession to comply with state laws, including tax laws, during Chapter 11. Accordingly, this paragraph must either be stricken, or the debtors' obligations to comply with tax laws must be specifically stated to be preserved notwithstanding this provision.

WHEREFORE, the Commonwealth respectfully requests that any order granting the Motion (i) confirm the status of the Commonwealth's tax liens as Permitted Encumbrances under

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<sup>1</sup> The Commonwealth's secured and priority tax claims must be paid in full in "cash" in accordance with 11 U.S.C. §§ 1129(b)(2)(A) and 1129(a)(9)(C). Stocks, warrants, and promissory notes that make up a large portion of the purchase price under the Agreement cannot be used to satisfy the Commonwealth's tax claims.

the Agreement, (ii) confirm the adequacy of the reserves for the Permitted Encumbrances as well as disclose the amounts in said reserves, (iii) provide adequate protection to the Commonwealth should its liens not be retained to its collateral, (iv) provide clarification of whether the Commonwealth's claims are Assumed Liabilities under the Agreement, (v) preserve the Commonwealth's setoff rights, and (vi) not repeal or abrogate state tax laws. The Commonwealth also requests such further relief to which it may be entitled.

Respectfully submitted,

THOMAS W. CORBETT, JR.  
ATTORNEY GENERAL

DATED: June 19, 2009

BY: /s/ Carol E. Momjian

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	:	Jointly Administered
Debtors	:	
	:	(Jointly Administered)
	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the Commonwealth of Pennsylvania, Department of Revenue's Limited Objection to Debtors' § 363 Sale Motion was served electronically and by First Class mail on June 19, 2009, upon the following:

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DATED: June 19, 2009

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